



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 229 and 252

RIN 0750-AI19

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Taxes (DFARS Case 2013-D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for a tax-related clause with an alternate and add a separate prescription for the basic clause. The rule also includes in the regulation the full text of the alternate clause.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 79 FR 11381 on February 28, 2014, to revise the presentation of the

DFARS part 229 clause with an alternate. No public comments were submitted in response to the proposed rule.

II. Discussion

This final rule revises the single DFARS part 229 clause, 252.229-7001, Tax Relief, which has an alternate. The naming convention results in proposed new clause titles, i.e., Tax Relief-Basic and Tax Relief-Alternate I. An umbrella prescription contains the elements common to the basic clause and the alternate. The specific prescriptions for the basic clause and the alternate address only the requirements for their use that enable the selection of the basic or the alternate.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to (1) create an umbrella prescription for the elements common to the basic clause and the alternate of DFARS clause 252.229-7001, Tax Relief, (2) create a specific prescription for the basic clause and alternate clause that address only the requirements for their use, and (3) include the full text of the alternate clause.

No comments were received from the public in response to the initial regulatory flexibility analysis.

There will be no impact on small business entities since DFARS clause 252.229-7001 is used only in solicitations and contracts when award is made to a foreign concern and performance is in a foreign country.

This rule does not add any new information collection, reporting, or record keeping requirements. No alternatives were identified that will accomplish the objectives of the rule.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 229 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 229 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 229 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 229—TAXES

2. Amend section 229.402-70 by revising paragraph (a) to read as follows:

229.402-70 Additional clauses.

(a) Use the basic or the alternate of the clause at 252.229-7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern for performance in a foreign country.

(1) Use the basic clause in solicitations and contracts when the contract will be performed in a foreign country other than Germany.

(2) Use the alternate I clause in solicitations and contracts when the contract will be performed in Germany.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.229-7001 by—

- a. Revising the introductory text, clause title and date; and
- b. Revising Alternate I.

The revisions read as follows:

252.229-7001 Tax Relief.

As prescribed in 229.402-70(a), use one of the following clauses:

Basic. As prescribed at 229.402-70(a)(1), use the following clause.

TAX RELIEF—BASIC (SEP 2014)

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Alternate I. As prescribed at 229.402-70(a)(2), use the following clause, which adds a paragraph (d) not included in the basic clause.

TAX RELIEF—ALTERNATE I (SEP 2014)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: [Offeror RATE (PERCENTAGE): [Offeror
insert] *insert]*

(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(d) Tax relief will be claimed in Germany pursuant to the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense. The Contractor shall use Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen (Performance Certificate for Tax-Free Deliveries/Performance according to the Offshore Tax Relief Agreement) or other documentary evidence acceptable to the German tax authorities. All

purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

(End of clause)

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